

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

## **FACTUAL HISTORY**

On June 15, 2015 appellant, then a 57-year-old customer care agent,<sup>3</sup> filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome due to factors of her federal employment. She alleged that her work duties increased and thereby caused increased symptoms. Appellant asserted that she first became aware of her claimed condition on February 7, 2000 and first realized its relation to her federal employment on March 28, 2015. She stopped work on March 17, 2015.<sup>4</sup>

Appellant submitted several medical reports in support of her claim, including a June 4, 2015 report from Dr. Sophia Grias-Radwanski, a Board-certified physical medicine and rehabilitation physician. Dr. Grias-Radwanski diagnosed moderate bilateral carpal tunnel syndrome, bilateral cubital tunnel syndrome, and neck pain with radiculopathy symptoms (as reported by appellant, but not seen on diagnostic testing).

In a July 23, 2015 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of her occupational disease claim, including a description of the work duties which she believed caused or aggravated her medical condition. In response, appellant submitted a statement in which she described her work duties, including the typing and mouse usage required by her job as a customer care agent. She asserted that her use of a headset placed pressure on her neck and shoulders, and she claimed that her work caused injury to her upper extremities, neck, and shoulders.<sup>5</sup> Appellant also submitted additional reports of Dr. Grias-Radwanski and other attending physicians.

By decision dated September 24, 2015, OWCP denied appellant's present occupational disease claim because she had not established the factual component of fact of injury. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

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<sup>3</sup> Appellant had worked on a full-time basis as a customer care agent since January 19, 2013. Her work duties included typing on a computer keyboard and using a computer mouse in order to address customer inquiries. Appellant was required to engage in intermittent hand and wrist movements and she had the option to sit or stand as tolerated.

<sup>4</sup> The present claim was assigned OWCP File No. xxxxxx503. Appellant has a prior claim under OWCP File No. xxxxxx427, for which she filed an occupational disease claim (Form CA-2) in January 2003. In March 2003 OWCP accepted the claim for bilateral carpal tunnel syndrome. Appellant filed a notice of recurrence (Form CA-2a) in October 2008 alleging a recurrence of disability due to the accepted bilateral carpal tunnel syndrome condition. OWCP converted appellant's recurrence claim to a claim for a new occupational injury, assigned OWCP File No. xxxxxx340 and, in May 2009, it accepted that claim for aggravation of bilateral carpal tunnel syndrome. It has administratively combined OWCP File Nos. xxxxxx427, xxxxxx340, and xxxxxx503, with OWCP File No. xxxxxx427 designated as the master file.

<sup>5</sup> Appellant asserted that the job she performed prior to working as a customer care agent required her to periodically take her headset off and then put it back on.

On October 21, 2015 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. By decision dated February 2, 2016, OWCP's hearing representative set aside OWCP's September 24, 2015 decision and remanded the case to OWCP for further development of the evidence, to be followed by issuance of a *de novo* decision.<sup>6</sup>

On remand, OWCP referred appellant for a second opinion examination with Dr. Allen L. Babcock, a Board-certified orthopedic surgeon. It requested that he provide an opinion regarding whether appellant sustained a new occupational injury. In a May 11, 2016 report, Dr. Babcock indicated that appellant might have bilateral carpal tunnel syndrome and he indicated that he could not identify an aspect of appellant's work duties which would have caused or aggravated a medical condition. He advised that appellant could work as a telephone operator.

In July 25 and 27, 2016 reports, Dr. Grias-Radwanski diagnosed moderate bilateral carpal tunnel syndrome, bilateral cubital tunnel syndrome, bilateral ulnar neuropathy, myofascial neck pain with cervical disc herniation, and rotator cuff tendinitis/tear of the left shoulder. In her July 27, 2016 report, she opined that these medical conditions were caused or aggravated by appellant's employment activities.

In a September 28, 2016 memorandum, OWCP advised that it had found a conflict in the medical opinion evidence between Dr. Grias-Radwanski and Dr. Babcock regarding whether appellant sustained a new occupational injury due to employment factors. It referred appellant for an impartial medical examination with Dr. Joseph Salama, a Board-certified orthopedic surgeon. OWCP requested that Dr. Salama provide an opinion regarding whether appellant sustained a new occupational injury.

In an October 31, 2016 report, Dr. Salama noted that appellant had significant arthritis in her cervical spine which was the result of a natural degenerative process and was not causally related to her work.<sup>7</sup> He advised that he was unable to say with any certainty if there was a causal relationship between appellant's employment and her bilateral carpal tunnel syndrome or left cubital tunnel syndrome. Dr. Salama also noted, "I do however believe that her employment may have aggravated these conditions." On February 16, 2017 he advised OWCP that he had reviewed additional medical records, but noted that these records did not change his October 31, 2016 opinion.<sup>8</sup>

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<sup>6</sup> The hearing representative acknowledged that appellant had submitted a detailed statement describing her work duties.

<sup>7</sup> Dr. Salama also noted that electromyogram and nerve conduction velocity (EMG/NCV) testing showed that appellant had bilateral carpal tunnel syndrome as well as left cubital tunnel syndrome without evidence of active denervation in the thenar muscle group or ulnar-inverted hand/forearm muscles.

<sup>8</sup> On November 11, 2016 OWCP requested a supplemental report from Dr. Babcock. In a November 23, 2016 report, Dr. Babcock noted that appellant had not worked since March 17, 2015 and he maintained that she had not suffered an employment-related aggravation of her medical condition. He believed that appellant could work on a full-time basis as a telephone operator with occasional use of a keyboard and mouse. It is unclear from the case record why OWCP requested a supplemental report from Dr. Babcock after declaring a conflict in the medical opinion evidence.

On March 10, 2017 OWCP requested that Dr. Salama provide a supplemental report which included a definitive opinion as to whether appellant's upper extremity conditions were aggravated by her employment activities. Dr. Salama did not provide a supplemental report and OWCP referred appellant for new impartial medical examination with Dr. Scott T. Monson, a Board-certified orthopedic surgeon. OWCP requested that Dr. Monson provide an opinion regarding whether appellant sustained a new occupational injury.

In an October 30, 2017 report, Dr. Monson noted that his examination revealed that appellant appeared to have mild bilateral carpal tunnel syndrome from a clinical standpoint. He noted that her carpal tunnel condition continued even though she had not worked in over two years and he opined that the condition was "likely not work related in this instance." Dr. Monson indicated that appellant could work as a customer care agent.

By decision dated November 20, 2017, OWCP denied appellant's claim, noting that the special weight of the medical opinion evidence rested with the well-rationalized opinion of Dr. Monson.

On November 28, 2017 appellant, through counsel, requested a telephonic hearing with a representative of OWCP's Branch of Hearings and Review. Prior to the hearing being held, OWCP's hearing representative issued a decision on April 20, 2018 by which she set aside the November 20, 2017 decision and remanded the case to OWCP for additional development, to be followed by issuance of a *de novo* decision. She indicated that a request should be made for Dr. Monson to provide a supplemental report.

Dr. Monson did not provide a supplemental report and, in June 2018, OWCP referred appellant for an impartial medical examination to Dr. Clifford M. Buchman, a Board-certified orthopedic surgeon. OWCP requested that Dr. Buchman provide an opinion regarding whether appellant had carpal tunnel syndrome, ulnar neuropathy, myofascial neck pain with cervical disc herniation, or rotator cuff tendinitis tear of the left shoulder. It further requested that, if appellant had any of these conditions, Dr. Buchman should indicate whether they were caused or aggravated by employment factors.

In a July 28, 2018 report, Dr. Buchman discussed appellant's factual and medical history, including her work as a customer care agent from January 2013 to March 2015. He reported the findings of his physical examination, noting that there was no atrophy in appellant's upper extremities and that the results were negative for Phalen's, Tinel's, Finkelstein's, and Allen's tests. Dr. Buchman reported good upper extremity strength with normal sensation to pinprick.<sup>9</sup> He reported findings upon range of motion testing of the cervical spine and noted that the Spurling's test was negative. With respect to the shoulders, Dr. Buchman noted that impingement was negative and that strength in the relevant muscle groups was excellent. He diagnosed negative examination for carpal tunnel syndrome, ulnar neuropathy, cervical spine, and shoulder rotator cuff tear. Dr. Buchman also noted that the upper extremity examination revealed no clinical signs of cubital tunnel syndrome and that the shoulder examination showed no evidence of pathology.

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<sup>9</sup> Dr. Buchman noted that appellant exhibited weakness upon grip testing, but he opined that the test results had questionable validity.

Upon the cervical examination, appellant had full range of motion of the cervical spine and did not exhibited any pain or spasm.

Dr. Buchman advised that the examination of appellant's shoulders was negative, noting that she might have symptoms in her shoulders, but did not have clinical findings. He indicated that an April 2016 magnetic resonance imaging (MRI) scan of appellant's left shoulder was positive for a very small tear of the supraspinatus tendon and that a June 2015 MRI scan of her cervical spine showed some degenerative changes which were normal with aging. Dr. Buchman indicated that June 2015 EMG/NCV findings were negative for appellant's hands, although she previously had mildly positive EMG/NCV findings. He maintained that appellant's use of headsets would not have been a factor in causing any of her symptom complexes. Dr. Buchman advised that appellant's clinical findings during the July 28, 2018 examination were negative and opined that none of her employment activities would have caused or aggravated her carpal tunnel, cubital tunnel, neck, or shoulder complaints/conditions.

By decision dated August 23, 2018, OWCP denied appellant's claim, finding that the special weight of the medical opinion evidence rested with the well-rationalized opinion of Dr. Buchanan, the impartial medical specialist.

On August 29, 2018 appellant, through counsel, requested a telephonic hearing with a representative of OWCP's Branch of Hearings and Review. During the hearing held on January 9, 2019, appellant provided further details regarding the repetitive work duties, including typing and handling her headset, which she believed caused her to develop several medical conditions.

By decision dated March 8, 2019, OWCP's hearing representative affirmed OWCP's August 23, 2018 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>10</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>11</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>12</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>13</sup>

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<sup>10</sup> *Supra* note 2.

<sup>11</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>12</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>13</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>14</sup>

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>15</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established employment factors.<sup>16</sup>

Section 8123(a) of FECA provides in pertinent part: “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”<sup>17</sup> In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>18</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

OWCP properly determined that there was a conflict in the medical opinion evidence between Dr. Grias-Radwanski, an attending physician, and Dr. Babcock, an OWCP referral physician, on the issue of whether appellant sustained a medical condition causally related to her accepted employment factors. In order to resolve the conflict, OWCP properly referred appellant, pursuant to section 8123(a) of FECA, to Dr. Buchman, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.<sup>19</sup>

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<sup>14</sup> *E.V.*, Docket No. 18-1617 (issued February 26, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>15</sup> *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

<sup>16</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

<sup>17</sup> 5 U.S.C. § 8123(a).

<sup>18</sup> *D.M.*, Docket No. 18-0746 (issued November 26, 2018); *R.H.*, 59 ECAB 382 (2008); *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>19</sup> See *supra* note 16. OWCP had referred appellant for prior impartial medical examinations, first to Dr. Salama and later to Dr. Monson. However, the impartial medical specialists failed to provide supplemental reports explaining their initial reports and, therefore, it was appropriate for OWCP to refer appellant to Dr. Buchman. See generally *S.R.*, Docket No. 17-1118 (issued April 5, 2018); *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232, 238 (1988) (regarding OWCP’s duty to obtain supplemental reports from impartial medical specialists when necessary for clarification).

In a July 28, 2018 report, Dr. Buchman noted that appellant's upper extremities were negative for Phalen's, Tinel's, Finkelstein's, and Allen's tests and that she had good upper extremity strength with normal sensation to pinprick. He noted that range of motion of the cervical spine was normal and that strength in the muscle groups of the shoulders was excellent. Dr. Buchman diagnosed negative examination for carpal tunnel syndrome, ulnar neuropathy, cervical spine, and shoulder rotator cuff tear, and he also noted that the upper extremity examination revealed no clinical signs of cubital tunnel syndrome. He indicated that appellant's June 2015 MRI scan cervical spine scan showed some degenerative changes which were normal with aging and that her June 2015 EMG/NCV testing was negative for upper extremity findings. Dr. Buchman concluded that her clinical findings during the July 28, 2018 examination were negative and he opined that none of her employment activities would have caused or aggravated her ostensible carpal tunnel, cubital tunnel, neck, or shoulder conditions.<sup>20</sup>

The Board finds that the special weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Buchman, the impartial medical specialist selected to resolve the conflict in the medical opinion.<sup>21</sup> Dr. Buchman's July 25, 2018 report establishes that appellant did not sustain a medical condition causally related to her accepted employment factors. The Board has carefully reviewed the opinion of Dr. Buchman and notes that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Buchman provided a thorough factual and medical history and accurately summarized the relevant medical evidence. He provided medical rationale for his opinion by explaining that appellant's clinical findings during the July 28, 2018 examination were negative. Dr. Buchman further explained that appellant's employment activities would not have been competent to cause or aggravate her claimed upper extremity, neck, or shoulder conditions.<sup>22</sup>

As the evidence of record is insufficient to overcome the special weight accorded to Dr. Buchman, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

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<sup>20</sup> In particular, Dr. Buchman indicated that appellant's use of headsets would not have been a factor in causing any of her symptom complexes.

<sup>21</sup> See *supra* note 17.

<sup>22</sup> See *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *Melvina Jackson*, 38 ECAB 443 (1987) (regarding the importance, when assessing medical evidence, of such factors as a physician's knowledge of the facts and medical history, and the care of analysis manifested and the medical rationale expressed in support of the physician's opinion).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 8, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board